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Attorneys for Plaintiffs

VIDEO SOFTWARE DEALERS ASSOCIATION
and ENTERTAINMENT SOFTWARE ASSOCIATION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

E-FILED - 3/16/06

VIDEO SOFTWARE DEALERS
ASSOCIATION and ENTERTAINMENT
SOFTWARE ASSOCIATION,

Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of the State of California;
BILL LOCKYER, in his official capacity as
Attorney General of the State of California;
GEORGE KENNEDY, in his official capacity as
Santa Clara County District Attorney, RICHARD
DOYLE, in his official capacity as City Attorney
for the City of San Jose, and ANN MILLER
RAVEL, in her official capacity as County
Counsel for the County of Santa Clara,

Defendants.

CASE NO. C-05-04188 RMW

JOINT CASE MANAGEMENT STATEMENT
AND ORDER

Pursuant to Federal Rule of Civil Procedure 26(f), Civil L.R. 16-9, and this Court's Standing Order, the parties to this case jointly submit the following Case Management Statement and Proposed Order.

DESCRIPTION OF THE CASE

(1) *A brief description of the events underlying the action:* On October 7, 2005, Governor Arnold Schwarzenegger signed into law Assembly Bill 1179 (the "Act"), which would impose various labeling requirements and sales prohibitions on video games in California. The Act was to become effective on January 1, 2006. Plaintiffs filed their complaint in this case on October 17, 2005, and, on October 19, 2005, filed a motion for preliminary injunction to prevent the enforcement of the Act. On December 21, 2005, following briefing and argument, this Court entered an order granting a preliminary injunction. *Video Software Dealers Assn. & Entertainment Software Assn. v. Schwarzenegger*, 401 F. Supp. 2d 1034 (N.D. Cal. 2005).

(2) *The principal factual issues which the parties dispute:* As explained below, the parties believe that this case may properly be resolved on summary judgment, and that therefore no material factual disputes exist at this point in time. The parties do, however, dispute the legal import of the material facts in this case.

(3) *The principal legal issues which the parties dispute:* The parties dispute the following legal issues:

(a) Whether the Act's restrictions on the sale of "violent" video games are an unconstitutional infringement on protected speech under the First Amendment.

(b) Whether the Act's labeling requirement forces plaintiffs and their members to engage in compelled speech in violation of the First Amendment.

(c) Whether the Act is unconstitutionally vague.

(4) At this point in time, as set forth below, the parties believe that no factual issues exist that would materially affect the legal issues in this case. If the Court determines that summary judgment is inappropriate, the parties will promptly submit a discovery plan designed to resolve any factual disputes expeditiously.

(5) All parties have been served and have appeared at this time.

1 (6) The parties do not currently intend to join any additional parties.

2 (7) No party has consented to the assignment of this case to a United States Magistrate Judge
3 for trial.

4 **ALTERNATIVE DISPUTE RESOLUTION**

5 (8) & (9) As noted above, and described at greater length below, the parties to this case agree
6 that there are no disputes as to any material facts, and that the Court can and should resolve this case
7 as a matter of law. The parties intend to file motions for summary judgment shortly, and do not plan
8 to make disclosures or engage in discovery unless the Court denies the impending motions for
9 summary judgment. The defendants do not agree that the Act is unconstitutional, and the plaintiffs
10 and their members require protection from the enforcement of the Act. In light of these facts, the
11 parties do not believe that any ADR process is likely to deliver benefits sufficient to justify the
12 resources consumed by its use (ADR L.R. 3-5(e)(3)), and therefore respectfully submit that this case
13 should be exempted from any ADR process at this time.

14 **DISCLOSURES AND DISCOVERY**

15 (10) & (11) Because the parties do not dispute any material factual issues, and because the
16 parties agree that this case can be disposed of upon summary judgment on the record before the Court
17 at this time, the parties have agreed that initial disclosures and discovery are not necessary and would
18 be an inefficient use of time and resources. The parties have further agreed that, in the event the
19 Court does not resolve this case on summary judgment, they will meet and confer promptly regarding
20 disclosures and discovery and present a proposed discovery plan to the Court at that time.

21 **SUMMARY JUDGMENT SCHEDULE**

22 (12) The parties agree that this case is appropriate for prompt resolution on a motion for
23 summary judgment. Therefore, the parties have not agreed to a trial date or length of trial, but have
24 agreed to the following briefing schedule for the anticipated motions for summary judgment:

25 Plaintiffs' and defendants' motions filed:	March 31, 2006
26 Defendants' and plaintiffs' oppositions filed:	April 19, 2006
27 Plaintiffs' and defendants' replies filed:	April 28, 2006
28 Hearing on motions:	May 12, 2006

DATED: March 10, 2006

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: _____/s/
Ethan D. Dettmer

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and ENTERTAINMENT SOFTWARE
ASSOCIATION

DATED: March 10, 2006

OFFICE OF THE ATTORNEY GENERAL

By: _____/s/
Zackery P. Morazzini
Deputy Attorney General

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BILL LOCKYER, in his official capacity as
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1 DATED: March 10, 2006

OFFICE OF THE SANTA CLARA COUNTY COUNSEL

2
3 By: _____/s/
4 David M. Rollo
Assistant County Counsel

5 Attorneys for Defendants
6 GEORGE KENNEDY, in his official capacity as
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7 ANN MILLER RAVEL, in her official capacity as County
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8

9 DATED: March 10, 2006

OFFICE OF THE SAN JOSE CITY ATTORNEY

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11 By: _____/s/
12 Robert R. Fabela
Assistant City Attorney

13 Attorneys for Defendant
14 RICHARD DOYLE, in his official capacity as
San Jose City Attorney
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ORDER

The Case Management Statement and Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

The Court vacates the Case Management Conference set for March 17, 2006. (jg)

DATED: 3/16/06

/s/ Ronald M. Whyte
The Honorable Ronald M. Whyte
United States District Judge